IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2778 of 2000
To
FIRST APPEAL No. 2796 of 2000
With
CROSS OBJECTION No. 49 of 2002
To
CROSS OBJECTION No. 67 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
MAFAJI KHENGAJI THAKOR - Defendant(s)

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Appearance :
MR SUNEET SHAH GOVERNMENT PLEADER for Appellant(s) : 1 - 2.
None for Defendant(s) : 1,
MR AJ PATEL for Defendant(s) : 1.2.1

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 23/11/2006

ORAL COMMON JUDGMENT

1. This group of First Appeals is arising from the common judgment and award dated 9th December, 1999 passed by the learned Assistant Judge, Mehsana in Land Acquisition Reference Nos. 3241 of 1993 to 3259 of 1993. Since the appeals involve the same facts and also the same question of law, they are heard together and now they are being disposed of by this common judgment.

2. The appellants are the original respondents of the aforesaid Reference Cases. They have filed these appeals under Section 54 of the Land Acquisition Act, 1894 [hereinafter referred to as the "Act"] to challenge the aforesaid common judgment and award. The facts giving rise to these proceedings in short can be stated as under.

2.1. The respondents were the owners of the agricultural lands situated at village Sabaliya in Kheralu Taluka, District Mehsana. These lands were needed for constructing Dharoi Canal Project. Hence, decision to initiate proceedings under the Act was taken. In pursuance of the same, Notification under Section 4 (1) of the Act was published in the Government Gazette dated 18th April, 1991. Thereafter declaration under Section 6 of the Act was published on 2nd January, 1992. Subsequently, after complying with all the formalities the Land Acquisition Officer made award on 28th September,

1992. He determined the market value of the lands acquired at Rs.1.20 paise per sq. mtr. Since the respondents were dissatisfied with the compensation awarded to them by the Land Acquisition Officer, they submitted an application for making reference to the Collector under Section 18 of the Act. Accordingly, the Reference was made and the aforesaid Reference Cases were listed before the learned Assistant Judge, Mehsana for trial.

2.2. Before the Reference Court, the respondents contended that the market value determined by the Land Acquisition Officer was hopelessly inadequate and it was required to be enhanced. According to them, the rate of the land in question ought to have been fixed at Rs.20=00 per sq. mtr. The Reference Cases were opposed by the appellants by filing written statement. According to them, the compensation determined by the Land Acquisition Officer was just and proper and it did not require any enhancement. They contended that considering the nature of the lands as well as lack of basic facilities in that area, the market value determined by the Land Acquisition Officer was adequate. They, therefore, prayed that the Reference Cases be dismissed.

3. The Reference Court, on the basis of the evidence led before it, oral as well as documentary,

arrived at a conclusion that the compensation awarded by the Land Acquisition Officer was much on lower side and it was required to be enhanced. In the opinion of the Reference Court, the market price of the land could be fixed at the rate of Rs.18=00 per sq. mtr. Thus, the Reference Court awarded additional compensation of Rs.16.80 paise per sq. mtr., together with solatium and interest on the market price of the acquired land at the rate of 9% per annum from the date of taking the possession till completion of one year and thereafter at the rate of 15% per annum till its realization from the date of award or from the date of taking possession, whichever was earlier. The Reference Court also directed that the respondents shall not be entitled to interest on award of additional amount payable under Section 23(A) of the Act as well as solatium under Section 23 (2) of the Act and they shall also not be entitled to receive solatium on the additional amount under Section 23 (1A) of the Act. Since the direction of the Court with regard to interest on additional amount and the solatium has hurt the respondents, they have preferred cross objections numbered above.

4. Mr. Suneet Shah learned Government Pleader has submitted that reliance placed by the Reference Court on the documentary as well as oral evidence is not proper. According to him the Reference Court ought to have taken

into consideration the other relevant facts to arrive at just and proper market value. He has submitted that reliance has been placed by the Reference Court on the Court's award which is quite old and it is altogether for different purpose. He has submitted that the appellants have preferred Civil Application for additional evidence and if that evidence is permitted to be brought on record, it will certainly show that the award made by the Reference Court is on higher side. As against that Mr. A.J. Patel learned advocate appearing for the respondents has submitted that the Reference Court has placed reliance on the previous award made by the Court and there cannot be better piece of evidence than the award made by the Court. He has, therefore, submitted that the appeals are required to be dismissed. Apart from the merits of the case, he has also submitted that in majority of the cases, the amount of award involved is around Rs.30,000=00 or less and, therefore, these appeals can be disposed of on the ground of smallness of the amount alone.

5. The learned advocate for the parties have also taken me through the evidence and relevant documents. It is an admitted position that no sale instances have been produced by the either side before the Reference Court. It is also not disputed that prior to the present acquisition, several acquisition had taken place, either

for the same purpose i.e., constructing Dharoi Canal Project or for some different purpose. The oral evidence comprises evidence of Keshaji Talaji Thakor, whose evidence is at Exh. 12. He is the original claimant of applicant of Reference Case No. 3252 of 1993 and 3258 of 1993. Keshaji Talaji Thakor has been examined on behalf of the other claimants also, whereas the opponents have not chosen to examine any witness. The oral testimony of witness Keshaji Talaji Thakor shows that in village Sabaliya there were facilities of Post Office, Police Station, Milk Producers Society, High school, Primary School, Electricity etc. He has stated that the claimants used to cultivate wheat, raido, cotton, jiru, variyali, jowar etc., round the year. He has also stated that they derived income of Rs.8,000=00 to Rs.9,000=00 per Vigha and after deducting expenses for agricultural, they receive Rs.5,000=00 to Rs.6,000=00 per annum. The respondents also placed reliance on the award made in respect of lands situated at Navapura near Vadnagar wherein District Court, Mehsana determined the market value at Rs.18=00 per sq. mtr. Against the said award, the other side preferred appeal before this Court, but the award was confirmed. The award in respect of lands of village Navapura is at Exh. 33. The State of Gujarat, therefore, went in appeal against the award made in respect of Navapura lands. It was numbered as First Appeal No. 2137 of 1993. The claimants of those

proceedings also preferred appeal being First Appeal No. 2138 of 1993 since they had claimed Rs.35=00 per sq. mtr. The Division Bench of this Court by judgment dated 20th July, 1998 enhanced the market value by Rs.5=00 and fixed rate of Rs.23=00 per sq. mtr. The judgment of this Court is produced at Exh. 34. This award was extensively relied on by the respondents on the ground that village Sabaliya was adjoining to Vadnagar and the lands were similar in nature. The Reference Court also held that village Sabaliya was within a distance of about 10 kms., and, therefore, award in respect of Navapura could be taken into consideration in absence of any other material and determined the rate of market value at Rs.18=00 per sq. mtr. The Reference Court however, kept in view the observations made by the Division Bench of this Court that the said case was decided on the facts of that case and it could not be treated as precedent. On the basis of the same, the Reference Court restricted the rate to Rs.18=00 per sq. mtr. The record of the case shows that except this no other material was brought on record by either side to enable the Court to determine the market value, but the judgment of the Reference Court of course, shows that all the relevant factors have also been taken into consideration by it, including the potentiality and the scope of the development. Therefore, in my opinion, the rate fixed by the Reference Court is just and proper. It may be noted here that so

far as the lands of Navagam are concerned, they were acquired for different purpose, but nevertheless, villages Sabaliya and Navagam are situated in the vicinity of each other and, therefore, it can safely be presumed in absence of any other contrary evidence that the lands were similar in nature and had same potentiality. Thus, on merits it appears that there is no scope for this Court to interfere with the award made by the Reference Court.

5. Apart from that considering the amount involved in the appeals, baring in one i.e. First Appeal No. 3245 of 1993, are small amounts and these appeals can also be disposed of on the ground of smallness of amounts. In a decision rendered by the learned Single Judge of this Court dated 7th December, 2005, in First Appeal No. 3560 of 2005 to 3564 of 2005 and its allied matters, the learned Judge has held that the claim involved in those appeals was less than Rs.30,000=00 and the appeal could be dismissed on the ground that they related to small and petty claims. In the present group the First Appeal arising from Reference Case No. 3245 of 1993 the claim in appeal is Rs.74,880=00 and in appeal arising from Reference Case no. 3256 of 1993 is Rs.32,256=00. In rest of the appeals the claim is less than Rs.30,000=00 or slightly above it, but the same can be included in the category of small and petty claim. Further since I have

not found any merit in these appeals otherwise also, these appeals are required to be dismissed.

6. This brings me to the cross objections filed by the respondents under Order 41 Rule 22 of the Civil Procedure Code. They have challenged the award to the extent it denies payment of interest on solatium under Section 23 (2) of the Act as well as additional amount payable under Section 23 (1A) of the Act. They have also filed these cross objections on the ground that the Reference Court ought to have assessed the market rate at Rs.20=00 per sq. mtr., instead of Rs.18=00 per sq. mtr., however, during the course of hearing Mr. Patel stated that he did not press the claim of the respondents with regard to compensation at the rate of Rs.20=00 per sq. mtr. He of course, submitted that with the decision rendered by the Constitutional Bench of the Apex Court in the case of **Sunder v. Union of India reported in 2001 AIR SCW pg 3692, t**he position of law has been made clear and it is held by the Apex Court that interest on solatium as well as additional amount awardable under Section 23 (1A) of the Act has to be paid by the State. Mr. Shah learned Government Pleader is not in a position to controvert this position of law. In the case of Sunder v. Union of India (supra) the Apex Court has laid down as under :-

“23. In deciding the question as to what amount

would bear interest under Section 34 of the Act a peep into Section 31 (1) of the Act would be advantageous. That sub-section says: “On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.” The remaining sub-sections in that provision only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay “the compensation awarded by him” to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression “awarded amount” would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof.

24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that “if such compensation” is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one years” on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.” It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that Section was framed or enacted.”

7. Further the Apex Court while quoting the passage from the decision of Punjab & Haryana High Court, rendered in the case of **State of Haryana v. Smt. Kailashwati reported in AIR 1980 Punjab & Haryana pg 117**, has held as under :-

> “27. We think it useful to quote the reasoning advanced be Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab & Haryana High Court in State of Haryana v. Smt. Kailashwati, (AIR 1980 Punj & Har. 117, Para 10) (supra).
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> “Once it is held as it inevitably must be that the solatium provided for under Section 23)2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation of the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorize the grant of interest on solatium as well.
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> 28. In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly.”

8. Thus, the Apex Court in no uncertain terms stated that the claimant shall be entitled to receive interest on additional amount under Section (1A) as well as sub-section (2) of Section 23 of the Act, since these

amounts also form part of the compensation to which the claimant is entitled. In view of the same, these cross objections are allowed in part and the applicants are directed to pay the interest on the additional amount under Section 23 (1A) of the Act as well as solatium under Section 23 (2) of the Act as per the direction of the Reference Court in respect of enhanced amount of compensation.

9. The result is the appeals are dismissed and cross objections of the respondents are partly allowed with no order as to costs.

R & P to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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